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Sacramento, CA 94283-0001



June 24, 2016

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

The full text of the amendments to the California Code of Regulations that concern the Use of passive canine searches on individuals entering department institutions is provided in its original single underline and strikethrough format. Changes to this original text, which are being proposed in this Notice, are indicated by **bold double underlining** for additional added text and **bold double strikethrough** for deleted text. These proposed changes are being made available for public comment.

As determined by the California Department of Corrections and Rehabilitation (CDCR), the attached text contains the following changes:

Section 3173.2(c)(2)(B): is amended to modify the language from “the visitor” to “all visitors” to ensure compliance with PC 6402. Additionally, subsection 3173.2(c)(2)(B) is amended to add the words “or if applicable, pursuant to section 3410.2” to clarify that visitors, specifically mentioned in section 3410.2, shall be informed of and shall be subject to the search options defined in that section.

Section 3173.2(c)(3): is amended to add the language “for Visitors Not Identified in Section 3410.2” to clarify which individuals are subject to the requirements prescribed in that subsection.

Section 3173.2(c)(3)(B): is amended to add the language “Electronic Drug Detection Equipment” to provide a definition for the acronym “EDDE.”

The 15-day comment period on these changes shall close on July 9, 2016. Submit any comments to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; fax to (916) 324-6075; or e-mail to rpm@cdcr.ca.gov before the close of the public comment period. Comments must be received no later than 5:00 p.m. on July 11, 2016.

Only those comments relating directly to the enclosed post-hearing changes that are indicated by **bold double underlining** or **double strikethrough** will be considered.

Original signed by:

TIMOTHY M. LOCKWOOD, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

Attachment

15-DAY RENOTICE TEXT OF PROPOSED REGULATIONS

In the following, bold double underline indicates additional text and bold ~~double strikethrough~~ indicates additional deleted text to the originally proposed text presented in the original single underline and strikethrough format.

Subchapter 2. Inmate Resources

Article 7. Visiting

3173.2. Searches and Inspections.

Subsections 3173.2(a) through 3173.2(b) are unchanged.

Subsection 3173.2(c) is unchanged and shown for reference:

(c) Visitors shall be required to submit to contraband and/or metal detection device(s) and/or electronic drug detectors including, but not limited to, ION scanners and other available contraband and/or metal detecting device(s) technology, and a thorough search of all personal items, including inspection of a wheelchair, implant, prosthesis or assistive devices, prior to being allowed to visit with an inmate. Visitors shall be subject to search by passive canines as follows:

Subsections 3173.2(c)(1) through 3173.2(c)(5)(d) are amended to read:

(1) Any person coming onto the grounds of any department facility is subject to search by a department canine as part of the department's drug interdiction program.

(2) Direct Search of Visitors using Passive Alert Canines.

Prior to beginning the search of visitors using passive alert canines, the Search Operations Commander or designee shall be responsible for determining if the search will be of all visitors entering or exiting an area, or only those selected on a random basis. The random selection method shall be documented on the Canine Air Scan Results Log prior to the commencement of the searches. The random pattern shall not be altered unless approved by the Search Operations Commander.

(A) The canine handler shall make a courteous Visitor Search Announcement informing the visitor(s) that he/she is conducting passive canine air scan searches of visitors using passive alert canines and that the purpose of the scan is to detect illegal drugs.

(B) The canine handler shall ~~request consent~~ advise the visitor he/she is going to conduct a passive canine air scan search of any the visitor. prior to conducting the passive air scan search. ~~The All~~ All visitors, including attorneys or legal organizations as identified in section 3141(c)(9) and employees of other government agencies, shall be informed that: (1) he/she does have the right to refuse the search, and (2) any visitor who refuses to be searched in this manner shall be denied contact visiting but may be authorized for a non-contact visit if available on that same day. Staff shall inform the visitor of available options based upon the number of refusals occurring within a twelve (12) month period as outlined in this policy or if applicable, pursuant to section 3410.2.

(C) The visitor shall be directed to not interact with the canine in any way.

(D) While inadvertent contact is a possibility, the handler shall not instruct the canine to contact the visitor.

(E) If the visitor seems excessively nervous, the handler shall attempt to reassure the visitor that the procedure is safe.

(3) Results of a Canine Search **for Visitors Not Identified in Section 3410.2.**

(A) If the canine does not give a positive canine alert during an air scan search of a visitor, the visitor shall be permitted to resume his/her visitor processing.

(B) If the canine does alert during an air scan search of the visitor, the visitor shall be informed that he/she shall be required to submit to an unclothed body search as a condition of a non-contact visiting. Refusal to submit to the search shall result in the denial of contact visiting for that day and approval for non contact visiting only, if available. All requests for unclothed body searches, the reason for the request, and specific facts on which the search is based shall be documented on CDCR Form 888 (Rev. 04/15), Notice of Request for Search, which is incorporated by reference. This form shall include the subject's name, date, and signature of person authorizing the search. Should the visitor refuse to be searched or in instances where drugs or contraband are discovered, a CDC Form 887 B (Rev. 01/03), Notice of Visitor Warning/ Termination/Suspicion/ Denial/ Revocation, which is incorporated by reference, shall be completed. This form shall specify the reason for the denial of visiting and time frames for which the denial/suspension are in effect. Subsequently, if the clothed body search is negative for contraband, the visitor shall continue with processing into the non-contact visiting area. However, if the clothed body search results in the discovery of contraband, the visitor shall be denied entrance to the facility and may be subject to arrest and referral for criminal prosecution. If the visitor refuses to consent to a clothed body search, visiting shall be denied for the day. All positive alerts (second **Electronic Drug Detection Equipment (EDDE)** scans/passive canine air scans), refusals to submit to clothed body searches after a positive alert, and/or refusals to participate in the drug interdiction process shall be recorded on the SOMS visiting record. A visitor shall be informed that he/she shall be subjected to the following:

1. Upon the visitor's next attempt to visit within a twelve (12) month period, the visitor shall not have the option of being randomly selected to participate in the drug interdiction process. The visitor shall participate in the drug interdiction process occurring on that day. If the visitor refuses to comply with this directive, visiting shall be denied for that day. If the institution is not conducting a drug interdiction process, the visitor will be allowed a contact visit consistent with departmental policies.

2. A visitor who refuses to participate in a drug interdiction process or submit to a clothed body search after a positive EDDE scan/passive canine air scan alert for the second time in a twelve (12) month period shall be denied a visit for that day. The institution head or designee may issue an order to suspend the visitor from the institution/facility within his/her jurisdiction for up to thirty (30) days, pursuant to CCR, Title 15, Sections 3176.1, 3176.2 and 3176.3. Upon the visitor's next attempt to visit within a twelve (12) month period, the visitor shall not have the option of being randomly selected to participate in the drug interdiction process. The visitor shall participate in the drug interdiction process occurring on that day. If the visitor refuses to comply with this directive, visiting shall be denied for that day. If the institution is not conducting a drug

interdiction process, the visitor will be allowed a contact visit consistent with departmental policies.

3. A visitor who refuses to participate in a drug interdiction process or submit to a clothed body search after a positive EDDE scan/passive canine air scan alert for the third time in a twelve (12) month period shall be denied a visit for that day. The institution head or designee may issue an order to suspend the visitor from the institution/facility within his/her jurisdiction for up to twelve (12) months, pursuant to CCR, Title 15, Sections 3176.1, 3176.2 and 3176.3. Upon the visitor's next attempt to visit within a twelve (12) month period, the visitor shall not have the option of being randomly selected to participate in the drug interdiction process. The visitor shall participate in the drug interdiction process occurring on that day. If the visitor refuses to comply with this directive, visiting shall be denied for that day. If the institution is not conducting a drug interdiction process, the visitor will be allowed a contact visit consistent with departmental policies.

4. A visitor, who refuses to participate in a drug interdiction process or submit to a clothed body search after a positive EDDE scan/passive canine air scan alert for the fourth time in a twelve (12) month period, shall be denied a visit for that day. The institution head or designee may issue an order to suspend the visitor from the institution/facility within his/her jurisdiction for up to twelve (12) months and refer the case to the director or designee for review of permanent exclusion of a person from any or all institutions/facilities, pursuant to CCR, Title 15, Sections 3176.1, 3176.2 and 3176.3.

(C) A visitor found in possession of drugs and/or cell phones shall be referred to the institution's Investigative Services Unit (ISU) for possible arrest and shall be suspended from visiting at any CDCR facility pursuant to sections 3176.1, 3176.2 and 3176.3, ~~except that the suspension shall be for three years on the first occasion and shall be a permanent exclusion on any subsequent occasions.~~

(D) Any confiscated controlled substance or other contraband shall be handled as evidence.

(E) Whenever a canine handler finds contraband, the find shall be reported to the on duty supervisor. The supervisor shall determine what action shall be taken.

(F) In instances when a positive canine alert is given, or if drug paraphernalia is discovered on the person of a visitor, the visitor shall be informed that he/she shall be required to submit to an ~~un~~clothed body search as a condition of a non-contact visiting.

~~(G) A visitor's refusal to submit to a required unclothed body search shall result in the denial of contact visiting for that day and approval for non-contact visiting only, if available., for the next two consecutive visits unless that visitor submits to an unclothed body search.~~

~~(H) Any visitor who refuses to submit to an unclothed body search after a positive canine alert and/or positive Electronic Drug Detection Equipment (EDDE) alert three times within a twelve-month period may be suspended from visiting at all CDCR facilities pursuant to section 3176.3, except that any such suspension shall not exceed one year.~~

(IG) All requests for unclothed/clothed body searches, the reason for the request, and specific facts on which the search is based shall be documented on CDCR Form 888 (Rev. 04/15), Notice of Request for Search, which is incorporated by reference. This form shall include the subject's

name, date, and signature of person authorizing the search. Should the visitor refuse to be searched or in instances where drugs or contraband are discovered, a CDC Form 887-B (01/03), Notice of Visitor Warning/ Termination/~~Suspension~~~~Suspicion~~/Denial/Revocation, which is incorporated by reference, shall be completed. This form shall specify the reason for the denial of visiting and time frames for which the denial/suspension are in effect.

(4) Positive Canine Alert due to prescribed medications.

(A) When conducting scans of inmate visitors, there may be occasions when legitimate circumstances exist that may result in a positive canine alert. The cause of this alert may be the visitor's use of prescribed medications that contain narcotics and other drugs for which the canine has been trained to alert.

(B) Should the visitor claim that a positive canine alert is due to one or more prescribed medications, that person must provide current documentation in the form of a ~~doctor's~~ licensed physician's, licensed physician's assistant's or certified nurse practitioner's verification or a valid prescription for the medication(s) that is/are suspected to have caused the positive canine alert before they will be permitted a contact visit. The visitor shall be informed that he/she shall be required to submit to an EDDE scan to determine drug type. The visitor shall also be informed that if he/she has a negative scan or alerts to a substance consistent with his/her medical verification, he/she shall be required to submit to a clothed body search as a condition of visiting. Any item(s) brought into the facility/institution by that visitor shall be subject to a thorough search. If no contraband is discovered, the visitor will continue through processing. If the document is not readily available, the individual shall be informed that he/she shall be required to submit to a clothed body search as a condition for non-contact visiting, if space is available. If no contraband is discovered, the visitor shall be permitted to have a non-contact visit.

~~(C) If the visitor has provided valid documentation and the prescribed medication is found to be the source of the positive scan, the Visiting Lieutenant may authorize a regular visit.~~

~~(D) If documentation is not readily available, a non-contact visit may be authorized, if available.~~

(5) Outside Law Enforcement Agencies.

Local police officers or other law enforcement officers shall not be involved in the search of visitors.

(6) Arrests/Citations/District Attorney Referral.

(A) Visitors who are searched and found in possession of drugs or contraband are subject to arrest. If an arrest is initiated, those arrested, along with the drugs or contraband discovered shall be turned over to the institution's ISU.

(B) Once the pre-booking process has been completed by CDCR staff, the arrestee(s) shall be transported without delay by CDCR personnel or by the local police/sheriff's department to a designated detention facility. Arrestee(s) shall not be held at the pre-booking area beyond a reasonable amount of time necessary to complete the process.

(C) If any visitor is found in possession of drugs or contraband, the ISU Lieutenant/Search Commander shall make any decision to arrest, issue a citation, or refer the matter to the District Attorney's office for prosecution.

(D) In all cases where a visitor is arrested and/or issued a citation for committing a criminal act while on institution grounds, a copy of CDCR 837-A (Rev. ~~07/05~~ 10/15), Crime/Incident Report, Part A - Cover Sheet, which is incorporated by reference, arrest reports, and staff reports documenting the arrest will be forwarded to the local District Attorney's office in accordance with existing departmental regulations in sections 3176.2 and 3316(a).

Subsections 3173.2(d) through 3173.2(i)(2) are unchanged.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 4573, 4573.5, 4576, 5054 and 6402, Penal Code.